

**TO: THE CHIEF EXECUTIVE OR MANAGING OFFICER OF ALL LOUISIANA
STATE-CHARTERED CREDIT UNIONS**

FROM: SID SEYMOUR, CHIEF EXAMINER

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RE: LOUISIANA OFFICE OF FINANCIAL INSTITUTIONS (OFI) - UPDATE

THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT (SAFE ACT)

On 11-13-09, the FDIC issued a Financial Institution Letter, FIL-64-2009, regarding their final rule on the SAFE Act. The FIL provides some highlights of the rule as well as a copy of the draft final rule in its present form. As the FIL notes, the rule will not be published in the Federal Register until the other agencies involved in this rulemaking complete their review and approval. The participating agencies have not finalized their rules, and the system that will be used for registration is not available to depository institutions at this time. The agencies will provide a public notice when registration is required, which will give the individuals 180 days to register. The agencies include the FDIC, FRS, OTS, NCUA, OCC, and FCA. A draft of the rule is available at <http://www.fdic.gov/news/board/2009nov12no8.pdf>. Please be advised that your credit union and its employees **are not required** to do anything at this time. You may contact Review Examiner Tim Robichaux at 225/922-0878 or trobichaux@ofi.louisiana.gov with any questions.

LA AG'S OFFICE ISSUES OPINION THAT ELECTRONIC TITLING IS MANDATORY

Since LSA-R.S. 32:707.2 was amended during the 2008 Regular Legislative Session, there has been some question as to whether the Office of Motor Vehicles (OMV) was mandated to comply with the electronic media system for lien recordation and title information, or whether it was voluntary. Prior to the amendment, the law provided that such acts would be voluntary. On 11-25-09, the Louisiana Attorney General's Office issued an opinion that the amendment makes implementation mandatory and use of the system is mandatory for all lenders. We understand that until the issuance of this opinion, the OMV had taken the position that the law was voluntary – not mandatory.

The law requires the OMV to develop a statewide computer system which will permit the electronic recording of information concerning the perfection and release of vehicle security interests without submitting or receiving paper title documents. The law provides that the OMV is mandated to develop such a system no later than 1-1-10, and authorizes the OMV to contract with public license tag agents for the purpose of administering a system which will provide for the recording of vehicle title information and security interest notification without the issuance of a paper title.

The law also mandates that each bank, finance company, lending institution or other lender shall designate a public tag agent with which such lender shall interface its computer system for the purpose of receiving electronic confirmation from the OMV, of the receipt and the filing of the security interest on the subject motor vehicle. Each lender shall also designate such public tag agent when transmitting a release or satisfaction of its lien. Electronic titles and electronic liens may be converted to a paper document by the lender forwarding a request to the OMV through its interface with its designated public tag agent, along with submitting the appropriate fees. The law provides for admissible evidence in legal proceedings of an electronic media transaction or recording under this law through the use of a written or printed report of an

electronic media transaction or recording, certified as true and correct by the OMV. [Click here to view a copy of 2008 Act No. 689.](#)

We have been in contact with representatives of the Louisiana Credit Union League (League) and understand that this topic was addressed at its New Laws Conference. However, it was not mandatory at that time. Recently, the League sent a “compliance update” to member credit unions regarding this topic.

The OMV recently posted a notice on its website: www.expresslane.org/vr/PTA_ELT.asp regarding this matter, along with a listing of public tag agents who are capable of filing electronically. Although the OMV does not have the authority to delay implementation, it will continue issuing paper titles until 6-30-10. If you have any questions, please contact me directly at 225-925-4675, or email sseymour@ofi.louisiana.gov.

FINANCIAL PERFORMANCE

Overall Financial Condition - As of 9-30-09, there were 47 state-chartered credit unions, or approximately 21 percent of the 229 credit unions domiciled in the State of Louisiana. For state-chartered credit unions, the net worth ratio decreased from 14.11% as of 12-31-08, to 13.53% as of 09-30-09. The ratio declined as a result of assets growing at a faster pace than net worth. State-chartered credit unions reported a relatively stable delinquent loans ratio of 1.20% as of 9-30-09, slightly down from the 1.21% as of 12-31-08. Loans delinquent less than six months continue to comprise the majority of total delinquent loans and the decrease since year-end 2008. The dollar volume of net charge-offs also declined from the year-end 2008. As a result, the ratio of net charge-offs to average loans has also declined slightly to 0.65% as of 9-30-09, from 0.67% as of 12-31-08. As of 9-30-09, net income increased as compared to the same period last year, primarily because of a reduction in the cost of funds. As a result, the return on average assets (ROAA) for 9-30-09, increased to 0.99% from the 0.89% reported at 9-30-08. Total loans and total shares increased from year-end 2008 to 9-30-09; however, because share growth exceeded loan growth, the ratio of total loans to total shares decreased to 74.59 as of 9-30-09, from 77.96% as of 12-31-08.

The 13.53% net worth ratio for Louisiana state-chartered credit unions remains significantly above the 10.05% ratio reported on a nationwide basis. Although the delinquency, net charge-offs, and ROAA ratios exceed those reported on a nationwide basis, the differences are not as significant. The loans-to-shares ratio was below the ratio reported on a nationwide basis, which also experienced faster growth in shares than loans and a decline in the ratio since year-end 2008.

ISSUES AND/OR TOPICS OF INTEREST

NCUA Corporate Stabilization Efforts – In January 2009, the NCUA Board approved a series of actions designed to enhance and support the corporate credit union system. The corporate credit union system was facing unprecedented strains on liquidity and capital due to extraordinary market disruptions and the current economic climate. In March 2009, the NCUA placed U.S. Central Federal Credit Union (US Central), Lenexa, Kansas, and Western Corporate (WesCorp) Federal Credit Union, San Dimas, California, into conservatorship in order to stabilize the corporate credit union system and resolve balance sheet issues.

On 5-20-09, *Helping Families Save Their Homes Act of 2009* (“Helping Families Act”) was signed into law. The Helping Families Act amended the Federal Credit Union Act and contained the following provisions:

- Created a Temporary Corporate Credit Union Stabilization Fund (“Stabilization Fund”) to mitigate near-term corporate stabilization costs with Board authority to assess premiums over 7 years;

- Extended through 2013 the \$250,000 share and deposit insurance ceiling Congress had enacted as part of the Emergency Economic Stabilization Act of 2008;
- Provided the NCUSIF authority to assess premiums over 8 years to rebuild the equity ratio should the ratio fall below 1.20%;
- Increased NCUA borrowing authority to \$6 billion; and
- Established NCUA emergency borrowing authority of \$30 billion.

On 6-18-09, the NCUA Board approved the following actions to legally obligate the Stabilization Fund for the costs of stabilizing the corporate system.

- The Stabilization Fund will pay the NCUSIF \$1 billion for assignment of the full right, title and interest in the outstanding capital note extended to US Central and executed on 1-28-09.
- Appropriate steps will be taken to legally obligate the Stabilization Fund for any liability arising from the Temporary Corporate Credit Union Share Guarantee Program (“TCCUSGP”) and the Temporary Corporate Credit Union Liquidity Guarantee Program (“TCCULGP”). To the extent that any liability from the TCCUSGP or TCCULGP exceeds funds available from the Stabilization Fund, funds shall be made available from the NCUSIF.

As a result, the NCUSIF was legally released from its obligations related to corporate stabilization actions. These actions resulted in natural person credit unions being able to recognize a NCUSIF Stabilization Income adjustment on their books to offset the previous NCUSIF write-down and a reduction in the premium assessment billing from 0.30 percent to 0.15 percent of insured shares as of 12-31-08. Details of these actions and implementation are detailed in NCUA Letter to Credit Union No. 09-CU-14 (June 2009).

On 11-23-09, NCUA announced that its Temporary Corporate Credit Union Share Guarantee Program (TCCUSGP) had been extended until 3-31-12, from 12-31-11. With the extension, new investments with maturities of two years or less in participating corporate credit unions made before 3-31-10, are fully covered by the guarantee program. This is in addition to the existing deposits already covered.

Reportedly, US Central and WesCorp completed their assessments of Other-Than-Temporary-Impairment (OTTI) charges for the third quarter of 2009. US Central recorded OTTI charges totaling \$320 million for the third quarter of 2009, resulting in a reduction of remaining Member Capital Shares (MCS) to 11.3% of the 12-31-08, balances. OTTI charges have fully exhausted Paid-in-Capital (PIC) I and PIC II balances and depleted MCS to \$140 million as of September 30, 2009. WesCorp recorded OTTI charges totaling \$356 million for the third quarter of 2009. OTTI charges have fully exhausted all PIC and MCS balances, and created a retained earnings deficit of \$4.6 billion as of 9-30-09. The third quarter OTTI was determined at both US Central and WesCorp based upon the review of all private label mortgage backed securities by Clayton Fixed Income Services, Inc. As a result of these charges, some natural person credit unions were notified that their “membership capital” (MCA) accounts at the corporates were reduced. The NCUA is advising credit unions to utilize the following journal entry for the MCA write downs:

Debt: Gain/loss on Investments (Call Report Account 420)	XXX	
Credit: Membership Capital		XXX

Management is reminded of its responsibility to make the appropriate accounting entries to properly account for the implementation of the Corporate Credit Union Stabilization Fund and thereby ensure the accuracy of the credit union's 5300 Call Report. Further information regarding the NCUA Corporate Stabilization Program is available at <http://www.ncua.gov/CorporateStabilizationProgram.html>.

Unrelated Business Income Tax (UBIT) Update - As of 9-30-09, one additional Technical Advice Memoranda (TAMs) was released and made public by the Internal Revenue Service (IRS) on UBIT. The latest TAM, dated 5-5-09, added the following services to the list of activities subject to UBIT:

- Financial management services for other credit unions via a credit union service organization;
- Financial services to nonmembers;
- Interest income from a controlled entity; and
- Income received from shared branching services to nonmembers

The IRS previously issued more than 25 TAMs in late 2006 and 2007 on UBIT from the audits of unidentified credit unions in Alabama, Connecticut and Colorado. The IRS previously determined that net income derived from the following products/services should be subject to federal taxation:

- Sale of accidental death and dismemberment (AD&D) insurance;
- Sale of group life, dental, health and cancer insurance;
- Car buying service and sale of car warranties;
- Sale of guaranteed auto protection (GAP) insurance;
- Sale of credit life and disability insurance;
- Sale of MEMBERS financial management services; and
- Fees from nonmember ATM usage.

However, the IRS has determined that the following products/services are not subject to UBIT:

- Sale of checks;
- Collateral protection insurance;
- Interchange income from VISA credit cards and checkcard programs

While the TAMs do not set a precedent for all state-chartered credit unions, they could indicate how an IRS auditor may treat a state-chartered credit union in this regard. You are reminded that appropriate expense allocation will reduce the amount of income that is subject to taxation. If a credit union does not track specific cost centers for such items, it may be allowed to determine the amounts on a pro-rata basis, using the percentage that the unrelated business income represents of the credit union's gross income and net "pro-rata" expenses against the said income. Credit unions should consult with their CPAs/Auditors about Form 990T and seek advice regarding how to calculate the income and expenses relating to UBIT.

On 5-15-09, an eight-person jury in the U.S. District Court of Wisconsin determined that three insurance products are related to the purpose of a credit union and should be not subject to UBIT. The lawsuit was filed by Community First Credit Union (CFCU), Appleton, Wisconsin, in federal court in January 2008 to challenge the IRS on its determinations that certain insurance products offered to members fall outside the credit union's main mission and are subject to UBIT. CFCU was seeking a refund of taxes paid on income from several insurance products.

Following the trial, Federal Judge William Griesbach denied a motion to overturn the jury's decision and established a 60-day deadline (9-14-09) to file an appeal. No appeal was filed with the court by the deadline. Although CFCU is generally considered by the industry as a "substantial authority" for credit unions to treat credit insurance and GAP as non-taxable activities, each individual state-chartered credit union – in consultation with its legal, tax, and accounting advisors – must determine for itself whether the CFCU decision constitutes substantial authority.

On 11-12-09, U.S. District Court Judge Christine M. Arguello issued a summary judgment on the second outstanding UBIT lawsuit filed in May 2008 by Belco Credit Union (Belco), Greenwood Village, Colorado, against the IRS for a refund of more than \$199,000. Judge Arguello ruled that income from investment products made available by Belco to its members were "substantially related" to Belco's tax-exempt purposes, and therefore the income from those activities was, under the law, exempt from UBIT. At the same time, Judge Arguello ruled that income from financial and investment products sold to *nonmembers* (because the investment advisors at Belco had some nonmember clients) was not "substantially related" to Belco's tax-exempt purposes, and therefore could be subject to UBIT.

Judge Arguello stated that several items will be decided in trial including the treatment of income from credit life and disability insurance and accidental death and dismemberment insurance as well as the sales of certain insurance products to non-members. The trial was held on 12-7-09, with closing oral arguments made on 12-11-09. Belco and the IRS are currently preparing to submit their post-trial briefs, due 2-1-10. Judge Arguello could take several weeks before making a ruling following the post-trial brief submissions.

Filing of IRS Form 990 - Management is reminded that the Internal Revenue Service (IRS) Form 990 tax return for the 2009 tax year is due to the IRS by May 15th. The Form 990 must be filed by the next business day when May 15th falls on a Saturday, Sunday, or legal holiday. Non-profit entities are allowed to file for an automatic 3-month extension with the completion and submission of a Form 8868 to the IRS prior to the due date. The Form 990 is an informational return for non-profit entities and is different from the Form 990-T which is utilized to report Unrelated Business Income Tax (UBIT). This office is not prepared to provide accounting or legal advice regarding UBIT or IRS Form 990.

5300 Call Report and Report of Officials Submissions – NCUA has completed its transfer of the Report of Officials and the 5300 Call Report submissions to an internet web-page based system. The login page is located at <https://cuonline.ncua.gov/CreditUnionOnline/Login.aspx>. Managers and report preparers are asked to pay close attention to the NCUA's submission deadlines. Recently, the submission deadlines have periodically changed.

Information on the NASCUS Website - You are encouraged to periodically check the NASCUS website at <http://www.nascus.org> for information and updates on the most current matters affecting state-chartered credit unions. The Regulatory Affairs Section (<http://www.nascus.org/rules-summaries.htm>) contains details on proposed rules and requests for comments that may affect state-chartered credit unions. The Legislative Affairs Section (<http://www.nascus.org/legislative-updates.htm>) provides information and NASCUS' commentary on proposed federal legislation that may affect state-chartered credit unions. Generally, NASCUS comments only on federal legislation that may affect the dual chartering system, state-chartered credit unions, share insurance requirements, or infringe upon state regulatory authority.

For more information on NCUA Corporate Stabilization Program, there is a direct link on the NASCUS home page and under the Regulatory Updates Section near the bottom left. The link is entitled: <http://nascus.org/Regulatory/corp-stabilization-program.htm>

Please contact Deputy Chief Examiner Fields at (225) 922-0633 or by email at jfields@ofi.louisiana.gov with any questions regarding any of the aforementioned issues and/or topics of interest.

Closing Comments – Again, we are always looking for recommendations to improve the manner in which we conduct examinations and better serve our constituents. If you have noticed an area which needs improvement, please let me know. We truly want to be a resource to you and your credit union. You can call me directly at 225-925-4675, or email sseymour@ofi.louisiana.gov.

Happy New Year!